

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R. RAMACHANDRAN NAIR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 5811 of 2006(P)

PETITIONER:

**P.P. PANKAJAKSHAN, PUTHENPARAMBU,
CHENNAMKARY, KAINAKARY EAST P.O.,
ALAPPUZHA-688 501.**

BY ADV. SRI. K.K. SATHISH

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY, GENERAL ADMINISTRATION (FFP. B)
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE DISTRICT COLLECTOR, ALAPPUZHA.**

BY GOVERNMENT PLEADER SRI. V.T.K. MOHANAN.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

A P P E N D I X

PETITIONER'S EXHIBITS:

- EXT. P1 : COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT THROUGH THE TAHSILDAR, KUTTANAD DATED 22.10.1998.**
- EXT. P2 : COPY OF THE COMMUNICATION NO. H4-69283/98-VI DATED 10.05.1999 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXT. P3 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 21.10.2003.**
- EXT. P4 : COPY OF THE PKC ISSUED BY SRI. H.K. CHAKRAPANI DATED 04.10.2003.**
- EXT. P5 : COPY OF THE TRUE EXTRACT OF THE CONVICT REGISTER OF CENTRAL PRISON, TRIVANDRUM ISSUED BY THE SUPDT. IN RESPECT OF SRI. H.K. CHAKRAPANI.**
- EXT. P6 : COPY OF THE JUDGMENT DATED 15.10.2004 IN WP(C) NO. 34831/03 OF THIS HON'BLE COURT.**
- EXT. P7 : COPY OF THE LETTER NO. 92215/FFP B3/2004/GAD DT. 10.02.2005 ISSUED BY THE 1ST RESPONDENT.**
- EXT. P8 : COPY OF THE REPRESENTATION DATED 19.01.2006 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**
- EXT. P9 : COPY OF THE NARC ISSUED BY THE CJM COURT, ALAPPUZHA.**

// True Copy //

P.A. to Judge.

smp

T.R. RAMACHANDRAN NAIR, J.

W.P. (C). NO. 5811 OF 2006

Dated this the 2nd day of August, 2007.

J U D G M E N T

The petitioner, who is now aged 93, has approached this Court claiming the benefit of Kerala Freedom Fighters' Pension Scheme. The claim of the petitioner is based on his active participation in the Punnapra-Vayalar Movement during the year 1946. It is stated that an arrest warrant was issued against him by the Special Magistrate Court, Alleppey in connection with the case No. P.E.7/1122 ME and in order to evade the arrest, he had gone underground for a period of two years and seven months from 14.03.1122 ME to 26.10.1124 ME.

2. The application of the petitioner is produced as Exhibit P1. The same was forwarded along with the Personal Knowledge Certificate issued by a prominent freedom fighter Sri. V.K. Kunju Panicken. He was given a reply as per Exhibit P2 directing to furnish Personal Knowledge Certificate from a prominent freedom fighter who had undergone imprisonment for a minimum period of two years and who are recipients of Central

Pension and also the "Thamrapathra". Thereafter, he forwarded the Personal Knowledge Certificate issued by Sri. H.K. Chakrapani along with Exhibit P3. Exhibit P5 is the extract of the Convict Register of Central Prison, Trivandrum relating to Sri. Chakrapani.

3. Earlier the petitioner had approached this Court by filing W.P.(C) No. 34831/2003. After referring to the documents produced by the petitioner, this Court directed the second respondent to forward Exhibits P3 to P5 therein to the State Government along with his views within a period of one month from the date of receipt of a copy of the judgment. Thereafter, Exhibit P7 order of rejection has been passed by the State Government.

4. In Exhibit P7, the main reason for rejecting the application was that he has not produced the records relating to P.E. 7/1122. Reliance was placed on Circular dated 31.12.1993 to find that in respect of applications received after 31.03.1994, such documentary evidence is required. It is also stated that in the Non Availability of Records Certificate the court has stated that "there is nothing to show that the said P.E.7/1122 related to

this court". As regards the Certificate from Sri. H.K. Chakrapani, the only observation was that it does not appear to support his claim adequately and thoroughly. But, a reference to Exhibits P4 and P5 will show that all the details relating to the petitioner have been stated by Sri. H.K. Chakrapani and the details regarding the conviction of Sri. Chakrapani were also available. Therefore, the said finding also is rendered without any application of mind. Eventhough in Exhibit P6 judgment this Court had directed the District Collector to forward Exhibits P3 to P5 therein, while passing Exhibit P7 the Government has observed that the delay in submitting the application is not genuine and acceptable. It is also stated that no convincing grounds are seen to condone the delay. Plainly the said reason is unsupportable for the reason that this Court had clearly directed in Exhibit P6 to consider the application based on the records produced by the petitioner and therefore the authority could not have rejected it on the ground of delay also. Further Exhibit P1 application is dated 22.10.1998. It is evident from Exhibit P4 that Sri. Chakrapani had been given the benefit of SSS Pension as per order dated 18.06.2003. As per Exhibit P2, petitioner was directed to produce Personal

Knowledge Certificate issued by prominent freedom fighters who are recipients of SSS Pension from Union of India. It is in response to it, that he submitted Exhibit P3 along with the documents relating to Sri. Chakrapani. Hence the ground of delay cannot be taken now to throw out the claim.

5. The petitioner herein has produced the Non-availability of Records Certificate issued by the Chief Judicial Magistrate Court, Alappuzha as Exhibit P9. He has also produced Exhibit P8 representation dated 19.01.2006 by which he has produced Exhibit P9 before the Government seeking a reconsideration of Exhibit P7.

6. Going by the Scheme, in the absence of records like jail records etc., the Personal Knowledge Certificate from prominent freedom fighters can be acted upon. The Personal Knowledge Certificate relied on by the petitioner now is that of Sri. Kittan Chakrapani. In a similar Writ Petition filed by Sri. P.K. Chellappan as W.P. (C) No. 26694/2003, a learned Single Judge of this Court had directed the Government to consider the application of the said petitioner in the light of the Personal Knowledge Certificate issued by Sri. Kittan Chakrapani

as well as the jail records of Sri. Kittan Chakrapani. Subsequently, the Government considered the same and as per letter No. 63819/FFP B3/05/GAD dated 30.10.2006, the said applicant had been granted pension under the Scheme. Learned counsel for the petitioner had produced a copy of the same before me for perusal. In the counter affidavit no objection has been taken against the acceptability of the Personal Knowledge Certificate issued by Sri. H.K. Chakrapani. The main ground is only relating to production of records relating to the warrant of arrest, which as held above cannot be taken in the light of NARC and the other records produced.

7. In the light of the above circumstances, the reasons stated in Exhibit P7 for rejecting the application are not correct and the same is quashed. Therefore, there will be a direction to the respondents to reconsider the case of the petitioner in the light of Exhibit P4 Personal Knowledge Certificate issued by Sri. H.K. Chakrapani, Exhibit P5 extract of the Convict Register relating to Sri. H.K. Chakrapani and Exhibit P9 Non-availability of Records Certificate issued to the petitioner by Chief Judicial Magistrate Court, Alappuzha.

8. It will also be mentioned herein that, when this Court had directed in Exhibit P6 judgment to consider the documents produced as Exhibits P3 to P5 therein, the authorities could not have relied upon the Circular dated 31.12.1993 to reject the application stating that jail records have not been produced. It is well settled that a Circular cannot go against the express provisions of a Statute, Rule, Notification, Scheme etc. Therefore, the claim of the petitioner cannot be defeated by placing reliance upon the stipulations of the Circular, especially in the light of Exhibit P6 judgment also.

The application of the petitioner will be considered on merits. The principles applicable for determination of eligibility has been laid down by the Supreme Court in **Gurdial Singh vs. Union of India & others [(2001)8 SCC 8]**. It has been held that "the standard of proof required for is not the same as is required in a criminal case or in a case adjudicated upon rival contentions or evidence of parties. A claim under the scheme should be decided on probabilities and not applying the test of 'beyond reasonable doubt' ". The petitioner is aged 93 now. Therefore, a decision will be taken by the respondents herein

within a period of six weeks from the date of receipt of a copy of this judgment. On the basis of the sanction, expeditious steps shall be taken to disburse the amounts also.

This writ petition is disposed of as above.

**T.R. RAMACHANDRAN NAIR
JUDGE.**

smp